

Message Text

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DRAFTED BY EB/ITP/EWT/MTLORIMER:TLW:DLB

APPROVED BY EB/ITP/EWT:MLORIMER

COMMERCE/OJCS:MGEORGE

TREASURY/OEWEP:SLYON

TREASURY/GC:BPALMER

L/EB:SBOND

EUR/EE:RCHRISTENSEN

EB/CSB/OSB:DBRAMANTE

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FM SECSTATE WASHDC

TO AMEMBASSY BUCHAREST

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E.O. 11652: N/A

TAGS: EEW, RO

SUBJECT: LONG-TERM COOPERATION AGREEMENT

REF: BUCHAREST 6346

PLEASE CONVEY FOLLOWING TO GOR OFFICIALS:

1. WE CONSIDER ROMANIAN REVISED DRAFT A MAJOR STEP FORWARD. IT PROVIDES AN AGREED BASIS FOR THE STRUCTURE
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OF AN AGREEMENT, AND ALSO REGISTERS CONCURRENCE OF OUR TWO GOVERNMENTS ON THE WORDING OF MANY PROVISIONS. WE APPRECIATE GOR'S RESPONSIVENESS, WHICH WE SHALL ENDEAVOR TO RECIPROCAL, IN INCORPORATING MANY PROVISIONS OF US

DRAFT.

2. SPECIFIC COMMENTS AND PROPOSALS FOLLOW:

PREAMBLE:

A) WE NOW APPEAR TO HAVE VIRTUALLY COMPLETE AGREEMENT ON TEXT OF PREAMBLE. WE SET FORTH AS FOLLOWS OUR PROPOSAL FOR ENGLISH-LANGUAGE TEXT, WHICH WE BELIEVE CONFORMS ENTIRELY ON ALL SUBSTANTIVE POINTS TO THAT IN ROMANIAN REVISED

DRAFT:

"THE GOVERNMENT OF THE SOCIALIST REPUBLIC OF ROMANIA AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA,
"NOTING WITH SATISFACTION THE FAVORABLE DEVELOPMENT OF ECONOMIC RELATIONS BETWEEN THE TWO COUNTRIES,
"RESOLVED TO PROMOTE ECONOMIC, INDUSTRIAL AND TECHNICAL COOPERATION BETWEEN THE TWO COUNTRIES ON THE BASIS OF THE PRINCIPLES OF INTERNATIONAL LAW, RESPECT FOR NATIONAL INDEPENDENCE AND SOVEREIGNTY, EQUALITY OF RIGHTS, NON-INTERFERENCE IN DOMESTIC AFFAIRS AND MUTUAL ADVANTAGE,
"TAKING INTO ACCOUNT THE RESPECTIVE LEVELS OF THE ECONOMIC DEVELOPMENT OF THE TWO COUNTRIES AND THE CHARACTERISTICS AND POTENTIAL OF THEIR ECONOMIES,
"DESIRING TO ENSURE CONTINUED EXPANSION AND DIVERSIFICATION OF ECONOMIC, INDUSTRIAL AND TECHNICAL COOPERATION AND PROVISION OF INFORMATION TO FACILITATE SUCH COOPERATION,
"TAKING INTO CONSIDERATION THE PROVISIONS OF THE JOINT STATEMENT ON ECONOMIC, INDUSTRIAL AND TECHNOLOGICAL COOPERATION BETWEEN THE SOCIALIST REPUBLIC OF ROMANIA AND THE UNITED STATES OF AMERICA OF DECEMBER 5, 1973 AND THE AGREEMENT ON TRADE RELATIONS BETWEEN THE SOCIALIST REPUBLIC OF ROMANIA AND THE UNITED STATES OF AMERICA OF APRIL 2, 1975,
"CONSIDERING THAT AGREEMENT ON GUIDELINES FOR THE DEVELOPMENT OF COOPERATION IS TO THEIR MUTUAL ADVANTAGE AND SERVES POSITIVELY THE INTERESTS OF THEIR PEOPLES,
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"HAVE AGREED AS FOLLOWS:"

B) WE SUGGEST FOR GOR'S CONSIDERATION POSSIBILITY OF ALSO INCLUDING REFERENCE TO CSCE IN PREAMBLE. WE MIGHT, FOR INSTANCE, INCLUDE JUST AFTER PARA ENDING "APRIL 2, 1975," AN ADDITIONAL PARA "HAVING IN MIND THE BENEFITS OF IMPLEMENTATION OF THE PROVISIONS OF THE FINAL ACT OF THE CONFERENCE ON SECURITY AND COOPERATION IN EUROPE,".

ARTICLE I

A) WE ARE PREPARED TO ACCEPT ROMANIAN TEXT FOR PARA 1,

WITH INSERTION OF "APPROPRIATE" BETWEEN "ALL" AND "STEPS".
QUALIFIER NECESSARY TO MAKE CLEAR THAT STEPS WOULD BE
CONSISTENT WITH GENERAL POLICIES OF THE TWO PARTIES.
SUGGEST THE WORD "THE" AFTER "FACILITATE" BE DELETED AND A
COMMA INSERTED AFTER "ORGANIZATIONS".

B) WE APPRECIATE INCLUSION OF TEXT OF PARA 2 AND WOULD
SUGGEST ONLY MINOR WORDING CHANGES, SO THAT PARA WOULD
READ AS FOLLOWS:

"THE PARTIES SHALL ENDEAVOUR TO ENSURE THAT FIRMS, COMPANIES AND ECONOMIC ORGANIZATIONS OF ONE COUNTRY, AND THEIR REPRESENTATIVES RESIDING IN OR VISITING THE OTHER

COUNTRY FOR COMMERCIAL PURPOSES, WILL ENJOY SUITABLE OPERATING CONDITIONS, INCLUDING ACCESS TO FACILITIES REQUIRED FOR THE EXPEDITIOUS CONDUCT OF THEIR BUSINESS."

C) OUR PARA 3 WAS INTENDED TO STRESS COMMITMENT BY PARTIES WITH REGARD TO TRADE RELATIONS RATHER THAN ECONOMIC, INDUSTRIAL AND TECHNICAL COOPERATION IN GENERAL. NONETHELESS, WE PREPARED TO ACCEPT GOR TEST, WITH ADDITION OF "AND MULTILATERAL" AFTER "BILATERAL", IN ORDER TO INCLUDE A BRIEF REFERENCE DIRECTED TOWARD CSCE AS WELL AS TOWARD GATT, ECONOMIC COMMISSION FOR EUROPE, AND OTHER MULTILATERAL ORGANIZATIONS.

D) PARA 4 WOULD HAVE TO BE DROPPED. WE ARE UNABLE TO
ACCEPT ANY COMMITMENT OUTSIDE FRAMEWORK OF TRADE AGREEMENT
TO EXTENSION OF MFN TARIFF TREATMENT. A GENERAL MFN COM-
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MITMENT REGARDING ECONOMIC, INDUSTRIAL, AND TECHNICAL CO-OPERATING COULD ALSO BE INTERPRETED AS IMPLYING OBLIGATIONS WITH REGARD TO STRATEGIC EXPORT CONTROLS THAT WE WOULD BE UNABLE TO HONOR.

E) PARA 5 WOULD ALSO HAVE TO BE DROPPED. WE UNABLE TO
COMMIT OURSELVES TO EXTEND GENERALIZED PREFERENCES TO ROMANIA FOR DURATION OF AGREEMENT. WHILE WE HAVE NO REASON TO DOUBT THAT THIS WILL BE POSSIBLE, A FIRM COMMITMENT TO DO SO WOULD BE INCONSISTENT WITH TITLE V OF THE TRADE ACT. SIMILARLY, GENERAL COMMITMENT TO PROVIDE CONCESSIONAL CREDITS AND OTHER ASSISTANCE TO ROMANIA COULD RAISE CONGRESSIONAL COMPLICATIONS. IN GENERAL, OUR LAW PROHIBITS ASSISTANCE TO ANY COMMUNIST COUNTRY UNLESS THE PRESIDENT FINDS AND REPORTS TO CONGRESS THAT SUCH ASSISTANCE IS VITAL TO THE SECURITY OF THE U.S. POLITICAL CONSIDERATIONS RENDER ADMINISTRATION INITIATIVES, OR CONGRESSIONAL SUPPORT, FOR AMENDMENT OF THIS LEGISLATION MOST UNLIKELY IN FORESEEABLE FUTURE.

F) WE ALSO PROPOSE INCLUDING IN ARTICLE I PARAS 5,6 AND 7 OF ARTICLE II OF THE U.S. DRAFT. PARA 5, WHICH PROTECTS LEGALLY ACQUIRED RIGHTS AND INTERESTS, IS VIRTUALLY IDENTICAL TO ARTICLE V, PARA 3 OF THE US - FRG FCN TREATY. PARA 6 ELABORATES ON PARA 5 OF THE JOINT STATEMENT ON ECONOMIC, INDUSTRIAL AND TECHNOLOGICAL COOPERATION OF DECEMBER 5, 1973 IT IS SIMILAR TO STANDARD PROVISIONS IN OUR TREATIES OF AMITY AND ECONOMIC RELATIONS AND OUR FCN TREATIES. WE PROPOSE REVISING PARA 7 OF THE U.S. DRAFT AS FOLLOWS:
"EACH PARTY AGREES TO FACILITATE TO THE MAXIMUM EXTENT POSSIBLE THE TRAVEL IN, TO, OR FROM ITS TERRITORY OF PERSONS ENGAGED IN BUSINESS ACTIVITIES CONSONANT WITH THE OBJECTIVES

OF THIS AGREEMENT." WE HOPE THIS WILL TAKE INTO ACCOUNT THE CONCERN REFLECTED IN ARTICLE III PARA 2 OF THE REVISED ROMANIAN DRAFT TO LIMIT THE APPLICABILITY OF A PROVISION OF THIS CHARACTER TO BUSINESSMEN ENGAGED IN ACTIVITIES THAT BOTH GOVERNMENTS WOULD CONSIDER APPROPRIATE.

ARTICLE II

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A) WE WOULD PREFER THAT THE LIST OF FIELDS CONTAINED IN PARA 1 OF ROMANIAN REVISED DRAFT INSTEAD BE PLACED IN AN ANNEX. IT WOULD BE APPROPRIATE FROM TIME TO TIME TO REVISE A LIST OF THIS NATURE. INSERTION OF THE LIST IN AN ANNEX, RATHER THAN IN THE BODY OF THE AGREEMENT, WOULD PERMIT US TO MAINTAIN GREATER FLEXIBILITY IN UNDERTAKING SUCH REVISIONS.

B) WE ARE PREPARED TO ACCEPT WORDING OF PARA 2 OF ROMANIAN DRAFT, WITH ADDITION THAT WOULD REFER TO PROVISIONS ALONG LINES OF ANNEX 1 OF U.S. DRAFT, WHICH, FOR REASONS SET OUT BELOW, WE BELIEVE IT WOULD BE USEFUL TO INCORPORATE. ACCORDINGLY, WE PROPOSE THAT, AFTER FIRST SENTENCE AS IN ROMANIAN DRAFT, REST OF PARA CONTINUE, "SUCH CONTRACTS WILL GENERALLY BE CONCLUDED ON TERMS CUSTOMARY IN INTERNATIONAL PRACTICE, AND MAY PROVIDE FOR SHARING AND TRANSFER OF BENEFITS, PARTICIPATION IN MANAGEMENT, AND PROCEDURES TO PROTECT THE RESOURCES COMMITTED BY EACH PARTNER IN COOPERATIVE ARRANGEMENTS, INCLUDING JOINT COMPANIES. PRINCIPLES GOVERNING THE ESTABLISHMENT AND OPERATION OF JOINT COMPANIES ARE SET FORTH IN ANNEX ... TO THIS AGREEMENT." (FYI EMBASSY SHOULD POINT OUT TO GOR THAT "BENEFITS" SHOULD BE CONSTRUED MORE BROADLY THAN "BENEFICI" OR "PROFITS".)

C) WE PROPOSE THAT TEXT OF PARA 3 BE REVISED AS FOLLOWS:

SUCH COOPERATION SHALL INCLUDE BUT NOT BE LIMITED TO:
-- COMMON PARTICIPATION IN CONSTRUCTION OF NEW INDUSTRIAL

FACILITIES AS WELL AS EXPANSION AND MODERNIZATION OF EXISTING FACILITIES, IN BOTH COUNTRIES;
-- COMMON PARTICIPATION, INCLUDING FORMATION OF JOINT VENTURES, OF FIRMS, COMPANIES AND ECONOMIC ORGANIZATIONS IN THE TWO COUNTRIES IN PRODUCTION AND MARKETING OF GOODS AND SERVICES;

-- PURCHASE, SALE AND LEASING OF MACHINERY AND EQUIPMENT;

-- PURCHASE AND SALE OF INDUSTRIAL AND AGRICULTURAL MATERIALS AND CONSUMER GOODS;

-- AS APPROPRIATE, THE PURCHASE, SALE AND LICENSE OF PATENT RIGHTS AND TECHNOLOGICAL INFORMATION ON PRODUCTS, DESIGNS AND PROCESSES;

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-- TRAINING AND EXCHANGE OF SPECIALISTS AND TECHNICIANS;

-- ESTABLISHMENT AND OPERATION OF OFFICES AND REPRESENTATIONS OF FIRMS, COMPANIES AND ECONOMIC ORGANIZATIONS IN THE TWO COUNTRIES;

-- PURCHASE AND SALE OF SERVICES, INCLUDING FULL AND EQUITABLE PARTICIPATION BY FIRMS, COMPANIES AND ECONOMIC ORGANIZATIONS OF THE TWO PARTIES IN BANKING; INSURANCE, INCLUDING MARINE AND AIR CARGO INSURANCE; AND OTHER FINANCIAL SERVICES;

-- SUCH OTHER COOPERATIVE ACTIVITIES AS MAY BE MUTUALLY AGREED BETWEEN PARTNERS IN THE TWO COUNTRIES."

IN VIEW OF OUR EXPORT CONTROL REGULATIONS, WE BELIEVE THE QUALIFICATION "AS APPROPRIATE" IS NECESSARY WITH REGARD TO TRANSACTIONS IN PATENTS, LICENSING, AND KNOW-HOW. WE THEREFORE PROPOSE TO DELETE THE SECTION BEGINNING "EXCHANGE OF KNOW-HOW" WITH THE EXCEPTION OF THE REFERENCE TO TRAINING AND EXCHANGE OF SPECIALISTS AND TECHNICIANS, WHICH, AS INDICATED ABOVE, WE WOULD INCLUDE AS A SEPARATE ITEM.

"EXCHANGE," AS OPPOSED TO "PURCHASE, SALE, AND LICENSE" OF TECHNOLOGY, WOULD NOT ORDINARILY BE "BASED ON CONTRACTUAL ARRANGEMENTS BETWEEN FIRMS, COMPANIES, AND ECONOMIC ORGANIZATIONS." REFERENCE TO EXCHANGE IS THEREFORE INAPPROPRIATE FOR THIS ARTICLE.

D) FIRST SENTENCE OF PARA 4 COULD BE ACCEPTED IF REPHASED AS FOLLOWS: "THE TWO PARTIES SHALL, AS APPROPRIATE, FACILITATE COOPERATION BETWEEN FIRMS, COMPANIES, AND ECONOMIC ORGANIZATIONS OF THE TWO COUNTRIES IN THIRD MARKETS." REMAINDER OF PARA WOULD HAVE TO BE DROPPED. WE INTERPRET SECOND SENTENCE AS REFERENCE TO INCLUSION OF ROMANIA AS POSSIBLE SOURCE FOR U.S. FOREIGN AID PROCUREMENT. IF SUCH IS MEANING, IT IS INAPPROPRIATE TO 10-YEAR AGREEMENT, AS CONGRESS OCCASIONALLY REVISES STATUTES GOVERNING FOREIGN AID. WE HAVE NEVER SOUGHT TO INCLUDE PROVISION OF THIS CHARACTER IN AGREEMENTS WITH OTHER GOVERNMENTS. HOWEVER,

WE DO NOT WISH TO PRECLUDE POSSIBILITY OF PROCUREMENT FROM
ROMANIAN SOURCES OF GOODS FINANCED BY USG CREDITS TO
DEVELOPING COUNTRIES. ALTHOUGH PROCUREMENT IN ROMANIA IS
NOW PROHIBITED BY 1961 PRESIDENTIAL DETERMINATION, WE IN-
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FORMED GOR AT RECENT JOINT COMMISSION MEETING THAT WE ARE
WORKING TO REMOVE THIS RESTRICTION.

E) WE BELIEVE PARA 5 SHOULD BE ALTERED SOMEWHAT TO APPLY
NOT ONLY TO BANKS AND BANK REPRESENTATIONS JOINTLY OWNED BY
INSTITUTIONS OF THE TWO COUNTRIES BUT ALSO TO THOSE SUCH AS

MANUFACTURERS HANOVERTRUST'S FACILITY IN BUCHAREST, WHICH
IS SOLELY U.S.-OWNED. MOREOVER, WE THINK IT WOULD BE
ADVISABLE TO REFER NOT SIMPLY TO CREDITING AND DISCOUNTING
ACTIVITIES BUT MORE GENERALLY TO BANKING SERVICES THAT SUCH
INSTITUTIONS MAY PROVIDE. THEREFORE, WE SUGGEST ALTERNATIVE
LANGUAGE ALONG THE FOLLOWING LINES:

"WITH A VIEW TO ENCOURAGING THE DEVELOPMENT OF BANKING
SERVICES IN SUPPORT OF ECONOMIC, INDUSTRIAL, AND TECHNICAL
COOPERATION, EACH PARTY SHALL FACILITATE, AS APPROPRIATE,
THE ESTABLISHMENT AND OPERATION IN ITS TERRITORY OF BANKING
INSTITUTIONS INVOLVING PARTICIPATION BY FIRMS, COMPANIES,
OR ECONOMIC ORGANIZATIONS OF THE OTHER PARTY."

F) WE WOULD PREFER NOT TO INCLUDE A PROVISION ALONG THE
LINES OF PARA 6. THIS PROVISION DUPLICATES A PART OF THE
MORE EXTENSIVE AND DETAILED FINANCIAL PROVISIONS CONTAINED
IN ARTICLE VI OF THE TRADE AGREEMENT. IF GOR FEELS A
STRONG NEED FOR SUCH A PROVISION WE SUGGEST THAT WE MERELY
USE THE FOLLOWING SENTENCE FROM ARTICLE VI OF THE TRADE
AGREEMENT:

"ALL FINANCIAL TRANSACTIONS SHALL BE MADE IN UNITED STATES
DOLLARS OR ANY OTHER FREELY CONVERTIBLE CURRENCY MUTUALLY
AGREED UPON BY SUCH NATIONALS, FIRMS, COMPANIES AND
ECONOMIC ORGANIZATIONS, UNLESS THEY OTHERWISE AGREE."

G) PARA 7 SEEMS TO US LARGELY TO DUPLICATE THE MEANING OF
THE FIRST SENTENCE OF PARA 2, AND WE THEREFORE SUGGEST IT
BE DROPPED.

H) WE REQUEST CONFIRMATION THAT THE FOLLOWING, WHICH IS
ACCEPTABLE TO US, WOULD BE AN APPROPRIATE TRANSLATION OF
THE ROMANIAN TEXT OF PARA 8:
"THE PARTIES AGREE THAT ACCELERATED NEGOTIATION OF PRO-
POSALS FOR COOPERATION BY THEIR FIRMS, COMPANIES, OR
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ECONOMIC ORGANIZATIONS HELPS TO LOWER COSTS, TO THE BENEFIT OF BOTH COUNTRIES, AND CREATES A FAVORABLE ATMOSPHERE FOR DISCUSSION OF NEW AREAS OF COOPERATION, PARTICULARLY FOR SMALL AND MEDIUM-SIZED FIRMS."

ARTICLE III

WE PROPOSE THAT THIS ARTICLE BE DROPPED.

A) PARA 1 APPEARS TO COVER MUCH THE SAME GROUND AS PARA 1 OF ARTICLE I, BUT WITH PARTICULAR EMPHASIS ON FACILITATION OF CONCLUSION OF CONTRACTS. WE WOULD PREFER TO AVOID LATTER EMPHASIS BECAUSE, FOR LONG-STANDING POLICY REASONS RELATED TO NATURE OF OUR ECONOMIC AND GOVERNMENTAL SYSTEM, U.S.G. GENERALLY REFRAINS FROM PARTICIPATION IN NEGOTIATION OR INTERPRETATION OF CONTRACTS BETWEEN AMERICAN FIRMS AND

AND FOREIGN ENTERPRISES.

B) AS MENTIONED EARLIER, WE AGREE THAT A PROVISION LIKE PARA 2 WOULD BE APPROPRIATE, AND HAVE SUGGESTED THAT IT BE INCLUDED IN ARTICLE I (SEE SUBPARA F UNDER DISCUSSION OF ARTICLE I).

C) PARA 3 IS UNACCEPTABLE. GRANTING FAVORABLE DUTY TREATMENT TO IMPORTS RELATED TO COOPERATION AGREEMENTS IS NOT CONSISTENT WITH THE INTERNATIONAL OBLIGATIONS OF BOTH THE US AND ROMANIA UNDER ARTICLE I, PARA 1 OF THE GATT. THE GATT SECRETARIAT, DURING WORKING PARTY ON ACCESSION OF HUNGARY, NOTED THAT "THE PREREQUISITE OF HAVING A COOPERATION CONTRACT IN ORDER TO BENEFIT FROM CERTAIN TARIFF TREATMENTS APPEARS TO IMPLY CONDITIONAL MOST-FAVORED-NATION TREATMENT AND WOULD, THEREFORE, NOT APPEAR TO BE COMPATIBLE WITH THE GENERAL AGREEMENT" (INT(72)66, 5 JULY 1972). WE ARE SURPRISED THAT A GATT MEMBER WOULD PUT FORWARD SUCH A PROPOSAL, TO WHICH WE CANNOT SUBSCRIBE.

D) AS MENTIONED EARLIER (SEE SUBPARA E UNDER DISCUSSION OF ARTICLE I) A GENERAL COMMITMENT TO PROVIDE PREFERENTIAL FINANCING AS CALLED FOR IN PARA 4 MUST BE RULED OUT.

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MOREOVER, U.S.G. FINANCING CAN BE EXTENDED ONLY ON THE BASIS OF THE MERITS OF EACH PROPOSAL. THE FACT THAT A PROPOSAL IS A FORM OF INDUSTRIAL OR TECHNICAL COOPERATION CAN NOT ENTITLE IT TO ASSURANCE OF MORE FAVORABLE TREATMENT. ACCORDINGLY, THIS PARA WOULD HAVE TO BE DROPPED.

ARTICLE IV

A) WE WOULD LIKE TO CONFIRM THAT FOLLOWING IS A SUBSTANT-

ALY ACCURATE ENGLISH VERSION OF ARTICLE IV OF THE REVISED
ROMANIAN DRAFT:

"1. IN ORDER TO ASSIST FIRMS, COMPANIES, AND ECONOMIC ORGANIZATIONS IN DETERMINING THE FIELDS AND PROJECTS MOST LIKELY TO PROVIDE A BASIS FOR MUTUALLY BENEFICIAL CONTRACTS, THE PARTIES, IN ACCORDANCE WITH THEIR LAWS AND REGULATIONS, SHALL MAKE AVAILABLE UPON REQUEST BY NATIONALS, FIRMS, COMPANIES, OR ECONOMIC ORGANIZATIONS OF THE OTHER PARTY, OR BY THE OTHER PARTY ITSELF, ECONOMIC, COMMERCIAL, AND STATISTICAL INFORMATION USEFUL FOR THE DEVELOPMENT OF MARKET FORECASTS AND THE EXPANSION OF ECONOMIC, INDUSTRIAL, AND TECHNICAL COOPERATION.

"2. SUCH INFORMATION SHALL INCLUDE:

A. STATISTICS CONCERNING PRODUCTION, NATIONAL INCOME,

WAGES AND EMPLOYMENT, CONSUMPTION AND PRODUCTIVITY;

B. FOREIGN TRADE STATISTICS AND INFORMATION ON LAWS, REGULATIONS, AND ADMINISTRATIVE PROCEDURES AFFECTING FOREIGN TRADE, TRANSFER OF TECHNOLOGY, AND THE OPERATION OF COOPERATIVE VENTURES, INCLUDING LAWS, REGULATIONS, AND PROCEDURES PERTAINING TO CURRENCY AND THE DETERMINATION OF EXCHANGE RATES.

C. INFORMATION ON THE DEVELOPMENT AND EXPLOITATION OF NATURAL RESOURCES;

D. PERIODIC DIRECTORIES, LISTS, AND ORGANIZATIONAL CHARTS OF FIRMS, COMPANIES, AND ECONOMIC ORGANIZATIONS CONCERNED WITH FOREIGN TRADE, AS WELL AS OTHER INFORMATION HELPFUL TO BUSINESS REPRESENTATIVES IN MAKING COMMERCIAL CONTACTS; AND

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E. INFORMATION ON BANKING AND FINANCE.

"3. THE PARTIES SHALL EXCHANGE ON A REGULAR BASIS AGRICULTURAL ECONOMIC INFORMATION, INCLUDING EXCHANGE OF INFORMATION ON STOCKS, FORWARD ESTIMATES ON SUPPLY AND DEMAND, AND TRADE IN MAJOR AGRICULTURAL COMMODITIES, IN ACCORDANCE WITH THE PROTOCOL ON DEVELOPMENT OF AGRICULTURAL TRADE OF SEPTEMBER 11, 1975."

B) WE PROPOSE THAT TITLE OF ARTICLE BE CHANGED TO "ECONOMIC INFORMATION." TEXT GIVEN ABOVE IS ACCEPTABLE WITH FOLLOWING CHANGES:

-- IN PARA 1, PHRASE "#AND, AS APPROPRIATE," ADDED AFTER PHRASE "LAWS AND REGULATIONS";

-- OPENING OF PARA 2 REWORDED AS: "#SUCH INFORMATION SHALL INCLUDE, BUT NOT BE LIMITED TO:"

QUALIFIER "AS APPROPRIATE" NEEDED BECAUSE USG MAY BE UNABLE TO ACQUIRE, OR MAKE AVAILABLE, INFORMATION HELD BY PRIVATE

COMPANIES.

ARTICLE V

A) RATHER THAN THE TITLE "ACTIVITY OF THE MIXED COMMISSION"
WE WOULD PREFER "ROLE OF THE JOINT ECONOMIC COMMISSION."
WE WISH TO AVOID ANY IMPLICATION THAT THIS ARTICLE IS
INTENDED TO DEFINE ALL THE FUNCTIONS AND RESPONSIBILITIES
OF THE COMMISSION, AND TO MAKE CLEAR THAT INSTEAD IT IS
INTENDED ONLY TO DESCRIBE THE RESPONSIBILITIES OF THE
COMMISSION PURSUANT TO THIS AGREEMENT. MOREOVER, THE WORD
"MIXED" IS INAPPROPRIATE BECAUSE THE COMMISSION, ON THE
U.S. SIDE, DOES NOT INCLUDE NON-GOVERNMENTAL PARTICIPATION
EXCEPT ON A VERY LIMITED, OCCASIONAL BASIS.

B) WE WOULD LIKE TO CONFIRM THAT THE FOLLOWING REPRESENTS
AN ACCURATE ENGLISH RENDITION OF THE TEXT OF THIS ARTICLE

IN THE REVISED ROMANIAN DRAFT:

"1. THE AMERICAN-ROMANIAN MIXED COMMISSION, ESTABLISHED
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PURSUANT TO THE JOINT STATEMENT OF DECEMBER 5, 1973, SHALL
MONITOR THE IMPLEMENTATION OF THIS AGREEMENT.

"2. THE RESPONSIBILITIES OF THE AMERICAN-ROMANIAN MIXED
COMMISSION ARE AS FOLLOWS:

A. TO EXAMINE THE DEVELOPMENT OF ECONOMIC, INDUSTRIAL,
AND TECHNOLOGICAL COOPERATION BETWEEN THE TWO COUNTRIES;
B. TO FACILITATE THE EXPANSION AND DIVERSIFICATION OF
ECONOMIC, INDUSTRIAL, AND TECHNICAL COOPERATION BETWEEN THE
TWO COUNTRIES ON THE BASIS OF MUTUAL BENEFITS, AND TO
IDENTIFY NEW AREAS FOR SUCH COOPERATION;
C. TO PROVIDE FOR REGULAR EXCHANGE OF VIEWS AND INFORMATION
ON THE DEVELOPMENT OF ECONOMIC, INDUSTRIAL, AND TECHNICAL
COOPERATION, AND ON RECIPROCAL EXTENSION OF BUSINESS
FACILITIES;
D. TO DISCUSS OTHER PROBLEMS RESULTING FROM THE IMPLIMENTA-
TION OF THIS AGREEMENT.

"3. THE COMMISSION MAY ESTABLISH TEMPORARY WORKING GROUPS
IN VARIOUS AREAS AS NECESSARY.

"4. THE COMMISSION MAY FACILITATE THE ESTABLISHMENT OF
MIXED CONSULTATIVE GROUPS, CONSISTING OF REPRESENTATIVES
OF FIRMS, COMPANIES, AND ECONOMIC ORGANIZATIONS OF THE TWO
COUNTRIES, ON PROBLEMS OF PARTICULAR INTEREST."

C) WE ARE PREPARED TO ACCEPT THIS TEXT WITH THE FOLLOWING

CHANGES:

-- CHANGE THE TITLE OF THE COMMISSION IN PARAS 1 AND 2 TO "JOINT U.S. - ROMANIAN ECONOMIC COMMISSION".
-- INSERT AT THE BEGINNING OF THE FIRST SENTENCE OF PARA 2 THE PHRASE "IN THIS RESPECT".
-- IN SUB-PARA 2D DELETE "PROBLEMS RESULTING FROM" AND SUBSTITUTE "MATTERS RELATED TO", WHICH CAN BE CONSTRUED MORE POSITIVELY TO APPLY NOT ONLY TO DIFFICULTIES THAT MAY ARISE BUT OPPORTUNITIES AS WELL.
-- IN PARA 4 DELETE "MIXED" AND SUBSTITUTE "JOINT". THE CONSULTATIVE GROUPS REFERRED TO WOULD, ON THE U.S. SIDE, BE LIKELY TO CONSIST ENTIRELY OF PRIVATE BUSINESSMEN AND REPRESENTATIVES OF ASSOCIATIONS RATHER THAN GOVERNMENTAL
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-- IN PARA 4 SUBSTITUTE "MATTERS" FOR "PROBLEMS".

ARTICLE V OF U.S. DRAFT:

A) WE WOULD PREFER TO RETAIN TEXT OF ARTICLE V OF U.S. DRAFT, WHICH STATES "NOTHING IN THIS AGREEMENT IS INTENDED TO DEROGATE FROM THE OBLIGATIONS OR RIGHTS OF THE PARTIES CONTAINED IN OTHER AGREEMENTS OR UNDERSTANDINGS BETWEEN THEM." WE BELIEVE IT SHOULD BE MADE CLEAR THAT PROVISIONS OF COOPERATION AGREEMENT SHOULD IN NO CASE BE CONSTRUED AS QUALIFYING UNDERTAKINGS CONTAINED IN OTHER BILATERAL AGREEMENTS. THIS IS PARTICULARLY IMPORTANT WITH RESPECT TO THE TRADE AGREEMENT, WHICH WAS APPROVED BY CONGRESS.

B) IF WE INCLUDE AN ARTICLE OF THIS CHARACTER, IT MIGHT ALSO CONTAIN THE FINAL PARAGRAPH OF ARTICLE VI OF ROMANIAN REVISED DRAFT, FOR WHICH WE PROPOSE FOLLOWING WORDING:

"TERMINATION OF THIS AGREEMENT SHALL NOT AFFECT CONTRACTUAL OBLIGATIONS ENTERED INTO BY NATIONALS, FIRMS, COMPANIES, AND ECONOMIC ORGANIZATIONS OF THE TWO COUNTRIES, OR BY EITHER PARTY."

ARTICLE VI OF ROMANIAN REVISED DRAFT:

A) WE NOTE THAT ROMANIAN DRAFT PROVIDES FOR APPROVAL WITHIN EACH GOVERNMENT AFTER AGREEMENT IS SIGNED, WITH ENTRY INTO FORCE UPON EXCHANGE OF APPROVAL NOTIFICATIONS. IN OUR CASE, SINCE CONGRESSIONAL APPROVAL WOULD NOT BE NECESSARY, THE APPROVAL PROCESS WITHIN THE EXECUTIVE BRANCH, WHICH INCLUDES APPROPRIATE CONSULTATIONS WITH CONGRESS, WOULD TAKE PLACE BEFORE SIGNATURE. WE WISH TO INQUIRE WHETHER A LIKE PROCEDURE WITHIN GOR IS POSSIBLE, SO THAT THE AGREEMENT COULD ENTER INTO FORCE ON THE DATE OF ITS SIGNATURE.

B) WE ARE PREPARED TO ACCEPT GOR PROPOSAL FOR ONE-YEAR EXTENSIONS OF AGREEMENT. WE PROPOSE SLIGHT MODIFICATION OF SECOND PARAGRAPH TO READ "THE AGREEMENT SHALL REMAIN IN FORCE FOR TEN YEARS. THEREAFTER, IT SHALL BE AUTOMATICALLY EXTENDED FOR SUCCESSIVE PERIODS OF 1 YEAR, PROVIDED THAT LIMITED OFFICIAL USE
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EITHER PARTY MAY TERMINATE IT AT THE END OF THE INITIAL TEN-YEAR PERIOD OR ANY SUCCESSIVE ONE-YEAR PERIOD BY GIVING SIX MONTHS' WRITTEN NOTICE TO THE OTHER PARTY."

ANNEX 1 OF U.S. DRAFT:

WE AGREE WITH GOR (PARA 2 REFTEL) THAT WE SHOULD AVOID DUPLICATION OF PROVISIONS OF OTHER AGREEMENTS. IN ANNEX 1 WE ARE TRYING TO WORK OUT A SET OF PROVISIONS NOT FOUND IN OTHER BILATERAL ARRANGEMENTS THAT WOULD LEND SUPPORT FOR

JOINT COMPANIES IN TWO RESPECTS. FIRST, WE WISH TO SET FORTH CLEARLY THE ENDORSEMENT OF BOTH GOVERNMENTS OF BASIC PRINCIPLES THAT SHOULD GOVERN THE OPERATION OF JOINT COMPANIES IF THEY ARE TO OPERATE ON A SOUND LEGAL AND COMMERCIAL BASIS.

WE THINK GOR WOULD ALSO FIND THIS USEFUL IN ATTRACTING ADDITIONAL US INVESTMENT. SECOND, WE WISH TO ENSURE THAT, WHERE APPLICABLE, JOINT COMPANIES HAVE RIGHTS, ASSURANCES, AND FACILITIES AT LEAST EQUAL TO THOSE ACCORDED BY THE TRADE AGREEMENT TO REPRESENTATIONS. WE WOULD APPRECIATE HAVING THE VIEWS OF GOR OFFICIALS ON SPECIFIC DIFFICULTIES THAT THE PROVISIONS OF ANNEX WOULD GIVE RISE TO, AND ALTERNATIVE FORMULATIONS THAT MIGHT BE CONSIDERED.

3. WE ANTICIPATE THAT THE VIEWS COMMUNICATED HERE WILL LEAD TO ADDITIONAL PROGRESS, AND WE SUGGEST THAT FOR THE TIME BEING WE CONTINUE TO EXCHANGE VIEWS THROUGH EMBASSY BUCHAREST. WE WILL ALSO KEEP GOR EMBASSY INFORMED OF OUR VIEWS AND OF DEVELOPMENTS. PERHAPS LATER MORE FORMAL NEGOTIATIONS MAY BECOME ADVISABLE, BUT FOR THE MOMENT MOMENT NO DECISION APPEARS NECESSARY CONCERNING THEIR TIMING AND VENUE. KISSINGER

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